



U.S. House of Representatives
Committee on Transportation and Infrastructure

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Chairman

Washington, DC 20515

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The Honorable Thomas O. Barnett
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Mr. Barnett:

I strongly urge the Department of Justice (DOJ) to oppose the Delta/Northwest merger that has been filed with the DOJ under the Hart-Scott-Rodino Act. The merger itself is likely to lead to less service to small communities, reduced competition in larger markets, and higher fares. These problems will be exacerbated by additional mergers, which are likely to be triggered by approval of the Delta/Northwest merger. At the end of the process, we may be left with an industry of three network airlines, which will have the ability to undermine the consumer benefits of deregulation.

The Antitrust Division has a long history of acting to preserve competition in the airline industry. As noted in the testimony of Deputy Assistant Attorney General James O'Connell before the House Aviation Subcommittee's May 14, 2008, hearing on airline mergers, in 1998, the Antitrust Division filed suit to prevent Northwest's acquisition of a controlling share of Continental Airline's stock, noting that "the acquisition would diminish substantially both Northwest's and Continental's incentives to compete against each other" on several hub and non-hub routes, as well as limit new entry into the hub markets. As a result of this lawsuit, Northwest sold shares of Continental that would have given it control, and retained only a 5 percent share. In addition, in 2001, the Antitrust Division announced its intention to challenge the merger between United Airlines and US Airways -- a merger proposal that I vigorously opposed -- concluding that the merger would have a negative impact on competition and increase fares throughout the United States.

I urge the DOJ to conduct an exhaustive review of the Delta/Northwest proposal. It is important that the DOJ's review not be confined to the impact of the merger on markets in which both carriers now provide non-stop service. The Department should also

consider the effects on markets in which the two carriers now provide one-stop service, whether this merger will reduce fare competition throughout the industry, and the effects of this merger on service and fares generally.

It is extremely important that in this review DOJ consider not only the merger itself, but also the "downstream" effects; that is, the possibility that if this merger is approved, other carriers will be forced to merge to stay competitive. Although a number of carriers have found it difficult to find suitable partners in this increasingly difficult economic environment, I believe that an approval of a Delta/Northwest merger would create considerable pressure for the remaining carriers to merge. To that end, I was heartened to learn at our hearing that the Justice Department would take into account the effects of other mergers that would be triggered by Delta/Northwest. In particular, I asked: "Isn't it reasonable for the Justice Department to give consideration to the consequences to the marketplace of a merger of carriers of this dimension, this magnitude and the cascade of actions that will take place in its wake?" Mr. O'Connell responded: "Mr. Chairman, yes, and that is something that we do look at. When we look at individual markets to determine the effect of a transaction in a marketplace, we look at all available information."

To ignore the "downstream" effects of a proposed Delta/Northwest merger would be to ignore reality. As soon as the merger was proposed, other major carriers began their own merger discussions. These should not be written off as sham discussions to raise public apprehension. It is conventional wisdom in the industry that a major carrier's market power depends on the size of the carrier's network, and a carrier cannot stand by while a competitor substantially increases the size of its network.

A reduction of the airline industry to three major carriers could substantially reduce competition and raise fares. Under the current competitive structure of the industry, when established carriers control markets, the tendency is for the carriers to follow each other's fare changes so that the fares are identical, and passenger choice is limited. These tendencies would be magnified if there were only a few major airlines. There would be enormous incentives for each carrier to refrain from competing with the others at their strong hubs and routes. Following this strategy would be likely to lead to the greatest mutual profitability, while strong competition across the board could prove suicidal. Indeed, as the Department of Transportation stated, "[e]conomic theory teaches that the competitive outcome of a duopoly is indeterminate: the result could be either intense rivalry or comfortable accommodation, if not collusion, between the duopolists."

Moreover, if the number of major carriers is reduced and each major carrier becomes larger and stronger, it would become increasingly difficult for new competition to gain a foothold in the industry.

A merger of dominant U.S. air carriers would also have a significant impact on international competition. The U.S.-European market is already dominated by three alliances of U.S. and European carriers. Members of these alliances have, or are about to receive, antitrust immunity to coordinate schedules and prices, and operate as though they were one carrier. Two of these

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groupings control over 80 percent of the traffic between the United States and Continental Europe. Mergers between major U.S. carriers will lead to even less competition within and between the three alliances. In addition, some analysts believe that the profits made on these lucrative international routes would be used to distort domestic competition, including making it more difficult for low cost carriers to grow.

Delta and Northwest argue that the growth of low cost carriers has created new competition that offset historical regulatory concerns with mergers. However, I would caution against an over-reliance on low cost carriers. Low cost carriers do not serve many of the same markets that the large network carriers serve. In addition, for some traffic, low cost carriers may be non-competitive because they do not offer the same benefits as network carriers, such as frequent flier benefits to foreign destinations. Moreover, many low cost carriers are struggling financially, with several going out of business or having filed for bankruptcy.

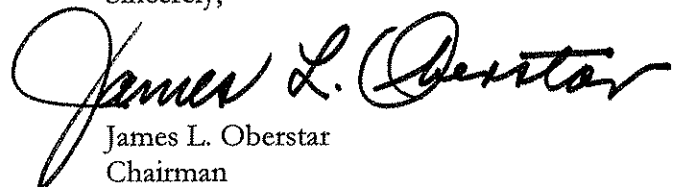
Delta/Northwest also cite fuel as a reason for consummating this merger. Fuel prices have hit unexpectedly high levels and this added expense has impacted the cost of airline operations. However, I am doubtful that this merger will help with fuel costs. The carriers acknowledge that a merger will not enable them to purchase fuel more cheaply. Moreover, at least some of the increase in fuel costs can be passed on to consumers. Collectively, the airlines have increased fares 11 times since December 2007, including a \$20 fuel surcharge levied in the last few weeks.

Nor is there any reason to conclude that the merger would create a financially stronger carrier that could better absorb losses from high fuel costs. Many past mergers have created financially weaker carriers. There are expenses and inefficiencies in trying to merge two separate corporate cultures. A merged carrier may suffer labor unrest, which can only be alleviated by generous and costly new labor contracts. The labor unrest can lead to poor service that ultimately drives passengers away. These types of expenses will largely offset the \$1 billion in savings Delta and Northwest claim from efficiencies, such as firing duplicative managerial staff.

In conclusion, I urge the DOJ to conduct the most intensive review of all elements of this proposed merger. I am confident that if the DOJ does so, it will decide to oppose the merger. The concerns I have raised were discussed in detail in our May 14 hearing. I am enclosing a copy of a preliminary transcript from the Subcommittee's May 14 hearing, for consideration in DOJ's review.

With all best wishes.

Sincerely,



James L. Oberstar
Chairman

Enclosure